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In the
Supreme Court of the United States

OCTOBER TERM, 1966

No. 726.

THE WACKENHUT CORPORATION, ET AL.,
appellants,

v.

THE HON. SALVADOR RODRIGUEZ APONTE,
ET AL.,
appellees.

BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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Statement

As stated in Appellees' motion to affirm, this is a direct appeal from an Opinion and Order of a district court of three judges convened pursuant to 28 U.S.C. Section 2284 staying proceedings before the United States District Court pending commencement by Appellants of a suit in the Courts of the Commonwealth of Puerto Rico. The text of that Opinion and Order is set forth at pages 11a-18a of the Appendix to the Jurisdictional Statement (hereafter "JS").

However, the Order now appealed was preceded by a trial on the merits to which Appellees had stipulated and agreed (JS, App. p. 19a) after having requested and obtained leave of the District Court to withdraw their pretrial motion dated October 19, 1965, in which they had sought a stay of proceedings (JS, p. 6). Following the trial, the District Court suggested to Appellees that the action might be stayed and remitted to the Commonwealth courts. Once again Appellees elected to remain in federal court (Appendix, Appellees' Motion to Affirm, pp. 4-5).

As noted in the Jurisdictional Statement (pp. 2-3), Appellants are wearing two hats in this action - their own as "Safety Agencies" or "agencies" defined in the law and regulations attacked (JS, App. 2a-3a, 9a) and that of their employees. As agencies, both corporate appellants complained that Section 20 of the law violates their constitutional rights by forbidding them, as agencies, from rendering security and plant protection services during the course of labor disputes (JS, App., pp. 3a, 9a). Appellant Marvil International Security Services, Inc., further complained of the absolute prohibition against the use, by an agency, of trained dogs in rendering security services contained in Section 19 of the Law and the Regulations (JS, App., pp. 3a, 9a). Finally, on behalf of themselves and their watchmen employees Appellants complained of the arbitrary grouping of watchmen with private detectives for certain regulatory purposes (JS, App., pp. 14a-15a).

Appellees' motion to affirm is grounded on Rule 16 of this Court which reads in pertinent part:

> "1 Within thirty days after receipt of the jurisdictional statement, the appellee may file a printed motion to dismiss, or motion to affirm. * * * * *
>
> * * * *
>
> (c) The court will receive a motion to affirm the

judgment sought to be reviewed on appeal from a federal court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument."

Argument

In summary, Appellants argue that the Motion to Affirm is ill-grounded under the quoted Rule 16 because it is definitely not manifest that the questions presented are unsubstantial.

Upon analysis, it is believed that the so-called doctrine of abstention inaugurated by Railroad Commission v. Pullman Co., 312 U.S. 496 (1941) is based on three considerations: (1) the desirability of comity between nation and state inherent in the concept of federalism; (2) the maxim that equity will not work a cure worse than the disease by enjoining broad state socio-economic regulatory schemes, especially in their formative stages; and (3) the reluctance of the federal courts to do something useless by rendering what might become a mere advisory opinion respecting the proper construction of an ambiguous state law. Balanced against these considerations is the right of litigants to expeditious decision and the constitutional duty of federal courts to decide. Appellants do not disagree with the doctrine. They disagree with its application to this case. It is submitted that its application herein violates the very reasons advanced for the existence of the doctrine.

Federal-state comity is surely satisfied by the voluntary acceptance of the federal forum by the state officials charged with that decision, especially where, as here, they moved for abstention, then obtained leave of court to withdraw that motion, then stipulated to trial, went to trial, and finally answered in the negative "the Court's inquiry about the

Commonwealth's desire to secure clarification and interpretation of Act Number 108 in the local courts." (Appellees' Motion, p. 4.) Appellees state that it is "not exactly correct" that the lower court invoked abstention of its own motion (Motion, p.3). That is precisely what the lower court did. The parties to the litigation did not invoke it. On the contrary, both rejected it. That leaves the court, In Hostetter v. Idlewild Bon Voyage Liquor Corp., 377 U.S. 324, 329 (1964), this Court held:

> "Unlike many cases in which abstention has been held appropriate, there was here no danger that a federal decision would work a disruption of an entire legislative scheme of regulation. We therefore accept the District Court's decision that abstention was unwarranted here, where neither party requested it and where the litigation had already been long delayed, despite the plaintiff's efforts to expedite the proceedings."

There is no danger here of working inequity by unnecessary impairment of state functions. It is readily apparent that Appellants do not challenge all of the law. Unchallenged is the regulation of private detective agencies or private detectives of the sleuth category. The ambit of Appellants' attack below is restricted and narrow, having no effect upon the licensing or other regulatory devices enacted. The attack below was confined to two provisions of a prohibitory nature, and certain aspects of the qualification requirements imposed upon watchmen employed by agencies, as distinguished from watchmen not so employed. Clearly, this is not a challenge to broad regulatory legislation, and therefore, there was no justification for abstention on this basis. Hostetter v. Idlewild Bon Voyage Liquor Corp., supra.

Finally, no basis for abstention can be found in the policy of avoiding constitutional questions which are dependent upon some subsidiary issue of state law, resolution of which by the state courts might moot the constitutional question. As noted, Appellants challenge the two absolute prohibitions forbidding agencies from rendering watchman services in the course of labor disputes and from using trained dogs in connection with watchmen. The application of these provisions to Appellants is immediate and clear, and therefore no special circumstances exist which would authorize the invocation of the extraordinary doctrine of abstention. Baggett v. Bullitt, 377 U.S. 360, 375-379 (1964). Both these statutory provisions and the arbitrary grouping of watchmen employed by agencies with private detectives are plain and unambiguous in all material respects, so that abstention is unjustified. Davis v. Mann, 377 U.S. 678, 690-691 (1964); City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 84 (1958). That the lower court believed the statute clearly applicable to Appellants is explicit in the Opinion and Order presently on appeal (JS, App. pp. 12a, 16a), and is implicit in the temporary restraining order left extant by the lower court, upon which Appellees so strongly rely in their Motion to Affirm (p. 2). Although the pleadings in the action below are not yet before this Court, they will show that Appellees themselves believed in the law applicable to Appellants, and admitted its application. Nor is there any basis for abstention to be found in the possibility that the provisions in question might be held violative of the constitution of Puerto Rico. Harman v. Forssenius, 380 U.S. 528, 536 (1965).

For these reasons, it is submitted that none of the factors forming the raison d'etre of the abstention doctrine exists in this case, and as a consequence, it is clearly an improper case for abstention.

Conclusion

Appellants request that the Appellees' Motion to Affirm be denied, and that the Court proceed to consider whether probable jurisdiction should be noted, for the reason that the Motion to Affirm does not make the showing required by Rule 16 that "it is manifest that the questions * * * are so unsubstantial as not to need further argument." On the contrary, the questions presented are so manifestly substantial as to require the noting of probable jurisdiction.

San Juan, Puerto Rico, February 15, 1967.

(s) WILLIAM B. GRAVES
William B. Graves

(s) DONALD M. HALL
Donald M. Hall

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

THE WACKENHUT CORPORATION ET AL. *v.* APONTE ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO.

No. 726. Decided March 13, 1967.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.